



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No: 8258-22

Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 23 November 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo).

You enlisted in the Navy and entered active duty on 26 March 1987. Your pre-enlistment physical examination, on 20 March 1987, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. As part of your enlistment application, on 19 March 1987, you signed and acknowledged the "Drug and Alcohol Abuse Statement of Understanding."

On 5 August 1987, you received non-judicial punishment (NJP) for both unauthorized absence

(UA), and for the incapacitation for duty due to wrongful prior indulgence in intoxicating liquor. You did not appeal your NJP. On 8 August 1987, you reported for duty on board the █  
█ (█) in █, █.

On 14 August 1987, your new command issued you a “Page 13” counseling warning (Page 13) documenting certain deficiencies in your performance and/or conduct. The Page 13 expressly warned you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative separation. You did not submit a Page 13 rebuttal statement.

On 7 April 1988, there is a “Program Entry Statement” in your service record (PES). The PES noted that you were recently evaluated by the CAAC in connection with suspected substance abuse difficulties and recommended for Level II rehabilitation treatment.

On 8 April 1988, you received NJP for drunk and disorderly conduct. You did not appeal your NJP. On 30 June 1988, you received NJP for drunk and disorderly conduct for urinating in the IM-3 Division berthing. You did not appeal your NJP. On 17 January 1989, you received NJP for both UA and the incapacitation for duty due to wrongful prior indulgence in intoxicating liquor. You did not appeal your NJP.

On 1 February 1989, you were notified of administrative separation proceedings by reason of misconduct due to a pattern of misconduct, and alcohol abuse rehabilitation failure. You waived your rights to consult with counsel, submit written rebuttal statements, and to request a hearing before an administrative separation board. In the interim, you were offered, but you declined the opportunity to receive a minimum of thirty days of inpatient alcohol rehabilitation treatment prior to being discharged. Ultimately, on 17 February 1989, you were separated from the Navy for a pattern of misconduct with an under Other Than Honorable (OTH) conditions discharge characterization and assigned an RE-4 reentry code.

On 19 July 1995, the Naval Discharge Review Board denied your initial application for relief.

On 16 January 2008, this Board denied your initial petition for relief. On 29 June 2015, your second petition to this Board was denied.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) while you accept full responsibility for your behavior, you posit that your chain of command erred in its discretion when they decided to discharge you with an OTH, (b) you were clearly struggling with abusing alcohol and your chain of command knew of your struggles, (c) other than verbal warnings you did not receive the help or treatment you needed to overcome your addiction, (d) your recommended treatment in 1988 should have been made mandatory, (e) your

chain of command failed to provide you with the help you needed to overcome your dependency and they failed to give you the opportunity to save your military career, and (f) you were in the beginning stages of a promising Navy career but were not able to flourish when your chain of command made a material error in ignoring the clear signs of your struggle with alcoholism and discharged you rather than provide you with access to regular treatment to help you overcome your abuse problems. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation including a brief from your legal counsel and advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board was troubled by the glaring inconsistency in your application. On one hand you state you accept full responsibility for your behavior, but on the other hand you seem to squarely put the blame on your command for your ultimate separation and suggest the command somehow erred in the way they handled your situation. The Board disagreed with the notion that your command made any discretionary errors in the handling and discharge processing of your case. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions. The Board also observed that you summarily declined to the Navy's attempt to provide you with inpatient alcohol rehabilitation treatment with the Department of Veterans Affairs prior to your separation.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your pattern of misconduct clearly merited your receipt of an OTH, and that such discharge was in accordance with all Department of the Navy directives and policy at the time of your discharge. The Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of



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service as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

12/16/2022

